2001

# State of Utah v. Brent Mauchley : Brief of Appellant

Utah Supreme Court

**IN THE SUPREME COURT OF THE STATE OF UTAH**

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| STATE OF UTAH,<br><br>Plaintiff/Petitioner,<br><br>v.<br><br>BRENT MAUCHLEY,<br><br>Defendant/Respondent. | Case No. 20010551-SC<br><br>Priority No. 13 |

# BRIEF OF PETITIONER

**ON WRIT OF CERTIORARI TO THE UTAH COURT OF APPEALS**


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# BRIEF OF PETITIONER

## JURISDICTIONAL STATEMENT

This case is before this Court on a writ of certiorari to the Utah Court of Appeals. This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2-2(3)(a) (1996).

## ISSUE PRESENTED AND STANDARD OF REVIEW

This Court has questioned the soundness of the corpus delicti rule since 1957. Should Utah now join the growing number of jurisdictions that have abandoned the corpus delicti rule in favor of the trustworthiness standard?

On certiorari, this Court reviews the court of appeals' decision for correctness, giving no deference to its conclusions of law. *State v. A.T.*, 2001 UT 82, ¶ 5, 34 P.3d 228.

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Resolution of this case involves interpretation of UTAH CODE ANN. § 76-6-521(1) (1999), which states:

> (1) A person commits a fraudulent insurance act if that person with intent to defraud:
>
> > (a) presents or causes to be presented any oral or written statement or representation knowing that the statement or representation contains false or fraudulent information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;
> >
> > (b) presents, or causes to be presented, any oral or written statement or representation as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract, or in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage, knowing that the statement or representation contains false or fraudulent information concerning any fact or thing material to the claim;
> >
> > (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;
> >
> > (d) intentionally, knowingly, or recklessly, devises a scheme or artifice to obtain fees for professional services, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions.

## STATEMENT OF THE CASE

### *The Trial Court Proceedings*

The State charged defendant and his wife with insurance fraud and theft by deception, both second degree felonies, in violation of UTAH CODE ANN. §§ 76-6-521 and 76-6-405 (1999). R. 2-3. Defendant moved to dismiss on the grounds that the only evidence of his guilt was his confession, but it was inadmissible because the State could

not satisfy the corpus delicti rule. R. 33-39. The trial court denied the motion. R. 98-99, 116: 9-10. Defendant then entered a conditional guilty plea to a charge of attempted insurance fraud, and reserved the right to appeal the denial of his motion. R. 85, 89-96.

The trial court sentenced defendant to an indeterminate prison term of zero-to-five years, but it suspended the prison sentence, placed defendant on probation for three years, and ordered that he serve sixty days in the Salt Lake County Jail or perform 300 hours of community service. R. 117: 5-6. The trial court also ordered that defendant pay full restitution, a $500 fine, a surcharge, and a $150 recoupment fee. R. 117: 6.

*The Direct Appeal*

In the court of appeals, defendant argued that the trial court erred in ruling that the State had satisfied the corpus delicti rule. *State v. Mauchley*, 2001 UT App. 177, ¶ 1, attached as Addendum A. The State conceded that it had not satisfied the corpus delicti rule. *See id.*, Add A. Nevertheless, it argued that Utah should join the federal courts and the growing number of state courts that have abandoned the corpus delicti rule in favor of a trustworthiness approach to determining the admissibility of a defendant's confession. *See* Brief of Appellee, filed in the court of appeals, case no. 20000682-CA. The State argued that the trial court's order should be affirmed on the alternative ground that the confession was trustworthy, and therefore admissible. *Id.*

The State recognized that this Court, rather than the court of appeals, should decide the issue. Accordingly, the State filed a suggestion for certification of the case to this Court. *See Mauchley*, 2001 UT App. 177 at ¶ 2, Add A. The court of appeals

declined to certify the appeal and reversed the trial court, based on the State's concession that it had not satisfied the corpus delicti rule. *Id* at ¶3, Add A.

*Certiorari Review Granted*

The State petitioned this Court to issue a writ of certiorari and review whether Utah should adopt the trustworthiness standard. *See* Petition for Writ of Certiorari. This Court issued the writ.

## STATEMENT OF FACTS

Defendant's motion to dismiss was submitted on the following stipulated facts:

> On the night of January 5, 1995, the Defendant and his wife, Kathleen Bolton, checked into the ER at the FHP Hospital in South Salt Lake claiming to have fallen into [a] hole caused by an uncovered water meter in the street outside FHP. An off duty police officer working security for FHP was shown the hole and barricaded it until it could be filled in. It was later determined during an independent investigation by the relevant insurance company that a construction truck may have run over the meter breaking the manhole cover.
>
> Both Defendant and his wife received medical attention for their claimed injuries. The insurance claim was made to Reliance Insurance Co. who apparently insures South Salt Lake City. After civil litigation regarding the amount of damages and who was at fault for the open manhole, the insurance company settled with Defendant and his wife for release of all claims in the amount of $50,000 on August 17, 1998. There was never any question that Defendant and his wife had fallen in the hole during the investigation and litigation in this case.
>
> On February 9, 1999, the Defendant went to the South Salt Lake police department and told Detective Smartt that he and his wife had seen the open manhole and had fabricated the story of falling in so they could obtain money for the fabricated accident. Defendant and his wife were then charged with Insurance Fraud in this case.

R 37-38.

## SUMMARY OF ARGUMENT

This Court has questioned the validity of the common law corpus delicti rule for nearly half a century The time has come to abandon the corpus delicti rule and join the growing number jurisdictions that have adopted the trustworthiness standard for determining whether a defendant's out-of-court statements can be used against him

Jurisdictions have abandoned the corpus delicti rule because it is unsound For example, the rule fails to serve its own purposes, its numerous exceptions further undermine its rationale, and it obstructs justice by hindering and even preventing discovery of truth Jurisdictions have adopted the trustworthiness standard because it better protects defendants and increases the factfinder's ability to ascertain truth.

In this case the State produced substantial independent evidence establishing the trustworthiness of defendant's confession. Therefore, defendant's confession was admissible.

## ARGUMENT

### I. UTAH SHOULD JOIN THE GROWING NUMBER OF JURISDICTIONS THAT HAVE ADOPTED THE TRUSTWORTHINESS STANDARD.

Although defendant voluntarily confessed his guilt, the court of appeals reversed his conviction on the basis of the corpus delicti rule In Utah, the corpus delicti rule is a judicially created rule requiring that before a defendant's inculpatory statements can be introduced against him, the State must prove, by evidence independent of the defendant's statements, that a crime occurred. *State v Johnson*, 821 P 2d 1150, 1162 (Utah 1991)

The independent evidence must clearly and convincingly show: "(i) '[t]hat a wrong, an injury, or a damage has been done,' and (ii) 'that such was effected by a criminal agency, i.e., without right or by unlawful means.'" *Id.* at 1162, 1163 (quoting *State v. Johnson*, 83 P.2d 1010, 1014 (Utah 1938) (alteration in original)).[1]

Nearly half a century ago this Court acknowledged the unsoundness of the corpus delicti rule. *See State v. Weldon*, 314 P.2d 353, 355 (Utah 1957). Speaking of the rule, this Court noted that "[n]otwithstanding its universality, eminent authorities have gravely doubted its validity." *Id.*

Over ten years ago this Court recognized the trustworthiness standard as an alternative to the corpus delicti rule. *See Johnson*, 821 P.2d at 1163 n.9. However, this Court reserved the opportunity to consider the trustworthiness standard because the evidence in *Johnson* was sufficient under the old rule. *Id.*

The opportunity lacking in *Johnson* presents itself in this case because the State concedes that the independent evidence did not establish the corpus delicti of insurance

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[1] The term "corpus delicti" is also generally used to describe the sum of the elements that must be proven in order to convict. *See Fontenot v. State*, 881 P.2d 69, 77 n.9 (Okla. Crim. App. 1994); *Frederick v. State*, 37 P.3d 908, 931 n.8 (Okla. Crim. App. 2001). In this general sense, the State must always prove the "corpus delicti" to obtain a conviction.

This general use of the term should not be confused, however, with the more specific "corpus delicti rule," which governs the admissibility of a defendant's out-of-court statements. *See Johnson*, 821 P.2d at 1162, 1163. Therefore, the issue before the Court is not whether the State must prove the "corpus delicti," in the general sense, to obtain a conviction. Rather, the issue is whether the State should no longer be required to satisfy the "corpus delicti rule" before a defendant's out-of-court statements can be used to establish his guilt.

fraud. *See Mauchley*, 2001 UT App. 177, ¶ 1, Add. A. For the reasons explained below, this Court should abandon the common law corpus delicti rule and adopt the trustworthiness standard.

### A. A growing number of jurisdictions have abandoned the corpus delicti rule.

The federal courts and a growing number of state courts have abandoned the corpus delicti rule in favor of the trustworthiness standard. The United States Supreme Court did so in *Opper v. United States*, 348 U.S. 84, 91-94 (1954). *See United States v. Wiseman*, 172 F.3d 1196, 1212 (10th Cir. 1999) ("*Opper* rejected a view which had earlier been the rule in many jurisdictions and was deeply rooted in the common law that independent evidence was required to corroborate the corpus delicti."). The *Opper* Court discussed the divergence among the circuit courts of appeal in applying the traditional corpus delicti rule and then concluded, "we think the better rule to be that the corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti." 348 U.S. at 93. The Court then announced the trustworthiness standard: "[i]t is necessary, therefore, to require the Government to introduce substantial independent evidence which would tend to establish the trustworthiness of the statement." *Id.* The Court clarified that "[i]t is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Id.* In the companion case of *Smith v. United States*, 348 U.S. 147, 156 (1954), the Court further explained that "[a]ll elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent

evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused."

Following *Opper*, the federal courts quickly adopted the trustworthiness standard. The Tenth Circuit, for example, rejected the corpus delicti rule in *Braswell v United States*, 224, F.2d 706, 711 (10th Cir. 1955). In 1988 the Seventh Circuit declared that "the corpus delicti rule no longer exists in the federal system, where the requirement is instead that there must be substantial independent evidence which would tend to establish the trustworthiness of the statement." *United States v Kerley*, 838 F.2d 932, 940 (7th Cir. 1988).

A growing number of states have followed suit. By 1978 at least five states had discarded the corpus delicti rule in favor of *Opper's* trustworthiness approach. *See* Julian S. Millstein, Note, *Confession Corroboration in New York: A Replacement for the Corpus Delicti Rule*, 46 FORDHAM L. REV. 1205, 1219 n.83 (1978). By 1993, at least ten states embraced the trustworthiness approach. *See* Thomas A. Mullen, *Rule Without Reason: Requiring Independent Proof of the Corpus Delicti as a Condition of Admitting an Extrajudicial Confession*, 27 U.S.F. L. REV. 385, 413 (1993).

Currently, at least twelve states, plus the District of Columbia, have completely abandoned the corpus delicti rule in favor of a trustworthiness approach.[2] *See State v*

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[2] In addition, a California appellate court applied the trustworthiness standard in *People v Cuevas*, 280 P 2d 831, 833 (Cal Dist Ct. App 1955); however, the corpus delicti rule remains the law in California. *See People v Ochoa*, 966 P 2d 442, 472 (Cal 1998).

*Hafford*, 746 A.2d 150, 173-74 (Conn. 2000) (adopting the trustworthiness standard for all crimes); *Adams v. United States*, 502 A.2d 1011, 1023 (D.C. 1986) ("the adequacy of corroborating proof is measured not by its tendency to establish the corpus delicti but by the extent to which it supports the trustworthiness of the admissions.") (quoting *United States v. Johnson*, 589 F.2d 716, 718-19 (D.C. Cir. 1978)); *Reynolds v. State*, 309 S.E.2d 867, 868 (Ga. Ct. App. 1983) ("corroboration in any material particular satisfies the requirements of the law."); *State v. Yoshida*, 354 P.2d 986, 990-91 (Haw. 1960) ("we find sound the reasoning of and align with the authorities which support the rule that does not require full proof of the corpus delicti to be established independently of the confession before it may be resorted to."); *People v. Brechon*, 390 N.E.2d 626, 629 (Ill. Ct. App. 1979) ("Independent evidence does not have to corroborate the proof as to any particular element of the crime charged but only establish a tendency to inspire belief in the truth of the accused's confession or admission."); *In re: Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984) ("not all or any of the elements [of the crime] had to be individually corroborated but could be 'sufficiently substantiated by independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession.'") (quoting *Smoot v. United States*, 312 F.2d 881 (D.C. Cir. 1962)); *State v. Zysk*, 465 A.2d 480, 483 (N.H. 1983) ("Proof of the crime by evidence independent of the confession is not necessary. There need only be sufficient corroboration to indicate that the confession is trustworthy."); *State v. Paris*, 414 P.2d 512, 515 (N.M. 1966) ("corroborative evidence need not be sufficient, independent of the statements, to

establish the corpus delicti, but . . . the Government must introduce substantial independent evidence which would tend to establish the trustworthiness of the statement."); *State v. Parker*, 337 S.E.2d 487, 495 (N.C. 1985) (holding that in all but capital cases, "it is no longer necessary that there be independent proof tending to establish the corpus delicti of the crime charged if the accused's confession is supported by substantial independent evidence tending to establish its trustworthiness."); *Fontenot v. State*, 881 P.2d 69, 77-78 (Okla. Crim. App. 1994) ("we now reject the corpus delicti line of analysis and reaffirm this Court's prior adoption of the standard which requires only that a confession be supported by 'substantial independent evidence which would tend to establish its trustworthiness.'") (quoting *Opper v. United States*, 348 U.S. 84, 93 (1954)); *State v. Osborne*, 516 S.E.2d 201, 204-05 (S.C. 1999) ("the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred."); *Moore v. State*, 999 S.W.2d 385 (Tex. Crim. App. 1999) (noting that under Article 38.22 of the Texas Code of Criminal Procedure, "oral statements . . . are admissible if at the time they were made they contained assertions unknown by law enforcement but later corroborated."); *Holt v. State*, 117 N.W.2d 626, 632-33 (Wis. 1962) (holding that corroboration of any significant fact is sufficient to allow conviction based on confession).

Four additional states have embraced the trustworthiness standard, but have ambiguously applied it by also discussing the traditional corpus delicti standard. *See*

*Jacinth v. State*, 593 P.2d 263, 265-66 (Alaska 1979) (applying both the trustworthiness and corpus delicti standards); *State v. True*, 316 N.W.2d 623, 625 (Neb. 1982) (holding that only slightly corroborated confession is sufficient to establish guilt, but also discussing traditional corpus delicti requirements); *State v. Lucas*, 152 A.2d 50, 60-61 (N.J. 1959) (holding that evidence independent of the confession must tend to establish its trustworthiness and prove loss or injury); *State v. Ervin*, 731 S.W.2d 70, 72 (Tenn. Crim. App. 1986) (applying both the trustworthiness and corpus delicti standards).

In at least three states, supreme court justices have written well-reasoned dissenting or concurring opinions urging rejection of the corpus delicti rule and adoption of the trustworthiness standard. *See Burks v. State*, 613 So.2d 441, 445-46 (Fla. 1993) (Shaw, J., dissenting) (stating that the corpus delicti rule "is an anachronism," and "a technicality that impedes rather than fosters the search for truth."); *People v. McMahan*, 548 N.W.2d 199, 203-09 (Mich. 1996) (Boyle, J., dissenting) (stating that the corpus delicti rule "promises too much, while it delivers too little."); *State v. Ray*, 926 P.2d 904, 907-11 (Wash. 1996) (Talmadge, J., concurring) ("Stare decisis should not stand in the way of enhancing the truthfinding purpose of criminal trials.").

Even states that retain the corpus delicti rule have recognized the rule's extensive criticism. *State v. Curlew*, 459 A.2d 160, 164 (Me. 1983) ("Commentators have decried the confusion [surrounding application of the corpus delicti rule]."); *State v. Hansen*, 989 P.2d 338, 346 (Mont. 1999) ("Eventually, the corpus delicti rule outlived its usefulness and the rule was thoroughly disparaged by commentators."); *Sheriff, Washoe County v.*

*Dhadda*, 980 P.2d 1062, 1065 n.1 (Nev. 1999) ("Commentators have generally agreed that the corpus delicti rule is no longer needed . . . ."); *State v. Ralston*, 425 N.E.2d 916, 919 (Ohio Ct. App. 1979) ("Other jurisdictions and text writers assert that the purpose of the corpus delicti rule is met if the state produces independent evidence showing the trustworthiness of the confession."); *State v. Aten*, 927 P.2d 210, 222 (Wash. 1996) ("The corpus delicti rule has been criticized by courts and legal commentators.").

This Court has also acknowledged the questionable policies behind the corpus delicti rule. *See State v. Weldon*, 314 P.2d 353, 355 (Utah 1957). In *Weldon* this Court noted that "[n]otwithstanding its universality, eminent authorities have gravely doubted its validity." *Id.* at 355. Although recognizing that "[t]he arguments presented by those who criticize the rule are not without some merit," *id.* at 356, this Court nevertheless applied the rule "in deference to the time honored and important precept of our law that it is better that ten guilty go free, than that one innocent be punished." *Id.*

The corpus delicti rule remains the law in Utah. *See State v. Johnson*, 821 P.2d 1150, 1162-63 (Utah 1991); *Sate v. DeHart*, 2001 Ut App. 12, 17 P.3d 1171. Nevertheless, this Court has included language in some opinions acknowledging the trend toward the trustworthiness approach. For example, in *State v. Johnson*, 83 P.2d 1010, 1015 (Utah 1938), *overruled in part and on other grounds by State v. Crank*, 142 P.2d 178, 188 (Utah 1943), this Court stated, "[c]onfessions are necessarily weak or strong evidence according to the circumstances attending the making and proving of them; and we think the only safe general rule is to require some other evidence corroborative of

their truth ' This Court further explained that "such corroborative evidence must consist of facts or circumstances appearing in evidence independent of the confession and consistent therewith, tending to confirm and strengthen the confession." *Id* at 1016

In *Weldon*, this Court went so far as to declare that, "the generally accepted view, *to which we give our approval*, is that the evidence independent of the confession need not establish the corpus delicti by separate, full or positive proof" 314 P 2d at 356 (emphasis added) The court further explained that, "the whole evidence, including the confession, may be considered together in determining whether the corpus delicti has been satisfactorily established." *Id*

Finally, in *Johnson*, this Court acknowledged the opportunity to address the trustworthiness standard. *See* 821 P 2d at 1163 n.9. It reserved this opportunity for a later case, however, finding that the evidence was sufficient to satisfy the traditional corpus delicti rule. *See Id.* The time has come for Utah to adopt the trustworthiness approach.

**B. Stare decisis does not justify retaining the corpus delicti rule.**

This Court "is not inexorably bound by its own precedents." *See State v Menzies*, 889 P 2d 393, 399 (Utah 1994) (overruling the automatic reversal rule of *Crawford v Manning*, 542 P 2d 1091(Utah 1975) Rather, this Court "will follow the rule of law which it has established in earlier cases, unless clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent" *Id* As will be demonstrated

below, the corpus delicti rule is no longer sound because (1) it poorly serves it own purposes, (2) its numerous exceptions further undermine its rationale, and (3) it obstructs justice by hindering and even preventing discovery of truth Abandoning the rule in favor of the trustworthiness standard will produce more good than harm, *see Menzies*, 889 P 2d at 399, because it better protects a defendant's rights, while increasing the factfinder's ability to ascertain truth.

### 1. The corpus delicti rule is unsound because it poorly serves its own purposes.

The corpus delicti rule developed in England in response to the very specific problem of supposed murder victims "reappearing" after their "murderer's" execution *See* Mullen, 27 U S.F L. REV at 399-401. Perry's Case, for example, is often cited as a "galvanizing force" in the development of the corpus delicti rule *Id* In that case a suspect confessed to murder and implicated his mother and brother as well. *Id* After all three were executed, the supposed victim appeared and recounted a bizarre story about being sold into slavery in Turkey. *Id.*

Whatever its origins, "[i]t is unclear whether the corpus delicti rule ever became part of English common law." *Id* at 400-401 If it did, "it was an ill-defined feature of the law related to homicide and was rarely, if ever, extended to other crimes " *Id See also*, 7 John H Wigmore, *Evidence*, § 2072, at 524 (revised by James H Chadbourn 1978) (noting that the English rule was limited to homicide cases) As Wigmore observed, "[t]he policy of any rule of the sort is questionable " § 2070, p 510

In America, the rule remains a creature of the common law, "no court has ever held that the rule is constitutionally grounded." Mullen, 27 U S F L REV at 387, *McCormick on Evidence*, §145 at 521 (John W Strong ed., 5th ed 1999) American jurisdictions, however, have expanded the rule beyond its narrow English origins and applied it to all types of crimes. *See State v Weldon*, 314 P 2d 353, 355 (Utah 1957) ("In this country, the corpus delicti rule is applied to all crimes")

Modern courts and commentators generally justify the corpus delicti rule as serving three purposes: first, protecting the mentally unstable who falsely confess, second, avoiding reliance on repudiated confessions out of concern for voluntariness, and third, promoting better law enforcement by reducing reliance on confessions. Mullen, 27 U S F. L REV at 401. "In every case," however, "the rationale proves too much while the corpus delicti rule delivers too little." *Id*

First, the rule does little to protect defendants who are mentally unstable and falsely confess. Because the rule only applies to out-of-court statements, *see Weldon*, 314 P 2d at 354, it offers no protection to the determined lunatic who confesses to an imaginary crime and proceeds to plead guilty *See* Mullen 27 U S F L. REV at 402-03 Nor does the rule protect the person who falsely confesses to an actual crime, because it requires only proof that a crime was committed by someone *Id*

Second, the idea that the corpus delicti rule avoids reliance on involuntary confessions is fallacious Ironically, the corpus delicti rule allows the use of a dubious confession if the prosecution can produce independent evidence of a crime, yet

completely bars the use of a concededly voluntary confession if there is no evidence of the crime other than the confession. *Id.* at 405.

Furthermore, modern constitutional and statutory protections surpass the rule's utility as a means of protecting the mentally unstable, or avoiding reliance on involuntarily confessions. *See People v. McMahan*, 548 N.W.2d 199, 204 (Mich. 1996) (Boyle, J., dissenting). For example, a confession obtained by knowing exploitation of a defendant's insanity violates due process and is inadmissible, even if other evidence corroborates the confession or establishes guilt. *Blackburn v. Alabama*, 361 U.S. 199, 206-07 (1960). Likewise, the totality of the circumstances, including government coercion and, where applicable, a defendant's mental disabilities and deficiencies, may render a confession involuntary and therefore inadmissible. *State v. Rettenberger*, 1999 UT 80, ¶¶ 15, 45, 984 P.2d 1009. When a defendant challenges the voluntariness of his statement, the State bears the burden of demonstrating voluntariness. *Id.* at ¶ 45 (quoting *State v. Allen*, 839 P.2d 291, 300 (Utah 1992)).

Additionally, *Miranda v. Arizona*, 384 U.S. 436 (1966), assures that all defendants are advised of their right to remain silent and their right to the presence of counsel during a custodial interrogation. The United States Supreme Court has also established a bright-line rule forbidding the police from initiating an interrogation following a defendant's exercise of his Fifth or Sixth Amendment rights. *See Edwards v. Arizona*, 451 U.S. 477, 484 (1981); *Michigan v. Jackson*, 475 U.S. 625, 636 (1986).

A criminal defendant also has a statutory right to petition for an evaluation of his mental competency at any stage of a criminal proceeding *See* UTAH CODE ANN § 77-15-3(1) (1999) A trial court may also raise the issue of a defendant's mental competency at any time *Id* at § 77-15-4 The above-cited precedents and statutes provide a formidable bulwark of modern protections designed to protect a criminal defendant from involuntary self-incrimination Thus, any "suggestion that the corpus delicti rule meaningfully buttresses the right against coerced self-incrimination is anachronistic at best ' Mullen, 27 U S F L REV at 405.

Finally, contemporary jurisprudence has also undermined the rationale that the corpus delicti rule promotes better law enforcement "The notion that law enforcement can be made better by barring confessions ignores the fact that voluntary confessions are sometimes the product of good law enforcement." *Id* at 406. When the police skillfully obtain a confession from a suspect in full compliance with the constitutional protections outlined above, it does not promote good law enforcement to bar admission of the confession on the grounds of the corpus delicti rule *Id* "Indeed ," as both this Court and the United States Supreme Court have recognized, "admissions of guilt by wrongdoers, if not coerced, are inherently desirable " *State v Piansiaksone*, 954 P 2d 861, 865 (Utah 1998) (quoting *Oregon v Elstad*, 470 U S 298, 305 (1985))

The law enforcement improvement rationale also fails to explain the limits of the rule Mullen, 27 U S F L. REV at 406 If the rule is designed to force the police to solve a crime unassisted by the suspect, then the rule should not allow the police to rely on the

suspect's confession to establish the most important part of their case: "'that the accused was the guilty agent.'" *State v. Johnson*, 821 P.2d 1150, 1162 (Utah 1991) (quoting *State v. Calamity*, 735 P.2d 39, 41 (Utah 1987) (noting that the rule does not require the State to show "that the accused was the guilty agent.")).

The corpus delicti rule, as Judge Posner observed, was "never well adapted to its purpose." *United States v. Kerley*, 838 F.2d 932, 939-40 (7th Cir 1988). A rule that fails to serve its own purposes is unsound and should be abandoned.

**2. The rule's numerous exceptions also demonstrate its infirmity.**

States that retain the corpus delicti rule have carved out numerous exceptions to the rule and also reduced the amount of evidence necessary to satisfy it. Mullen 27 U.S.F. L. REV. at 407. This need to create exceptions and modifications further demonstrates the rule's infirmity. As one commentator observed, "[t]he common need to work around the rule to achieve justice suggests that justice would be better served by abandoning the rule." *Id.* at 417.

For example, in *Willoughby v. State*, 552 N.E.2d 462, 466-67 (Ind. 1990) the Indiana Supreme Court observed that "[s]trict adherence to the corpus delicti rule, in light of its declining utility, presents great difficulties in modern criminal law." Thus, the court created an exception to the rule allowing for the admission of confessions to multiple crimes, even though independent evidence only established the corpus delicti of the principle crime. *See id.*

Several states have realized that the rule is poorly suited for application in some criminal prosecutions. In Arizona, for example, the legislature has abolished the corpus delicti rule in automobile collision cases resulting in injury or death. *See* ARIZ. REV. STAT. ANN. § 28-1388(G); *State v. Daugherty*, 845 P.2d 474, 477 (Ariz. Ct. App. 1992). The Arizona Court of Appeals further narrowed the rule when it held the rule inapplicable to crimes in which statements themselves are the corpus delicti, such as pandering, solicitation, promotion of gambling, or offering to sell narcotics. *Id* at 478. Likewise, the Nevada Supreme Court adopted the trustworthiness standard in a prosecution for conspiracy to commit murder. *See Doyle v State*, 921 P.2d 901, 911 (Nev. 1996). These states have already discovered the increasing difficulties in applying the corpus delicti rule to the more numerous and complex crimes set forth in modern criminal codes. *McCormick on Evidence*, §147 at 528 (John W. Strong ed., 5th ed. 1999). This is especially true for crimes "that may not have a tangible corpus delicti, such as attempt offenses, conspiracy, tax evasion and similar offenses." *Id.*

Some states have relaxed the rule by not requiring proof of the corpus delicti to exclude all inferences of a noncriminal cause of the harm or injury. *See Commonwealth v Williams*, 417 A.2d 1200, 1020 (Pa. Super. Ct. 1980) ("A corpus delicti may exist even though the circumstances may also be consistent with innocence."); *People v Ochoa*, 966 P.2d 442, 473 (Cal. 1998) (involving a rape charge).

Several states, including Utah, have also excluded application of the rule to certain categories of statements. *See* Mullen 27 U S F L REV at 409-10. In Utah and

Pennsylvania, for example, the rule only applies to inculpatory statements. *See State v. Johnson*, 821 P.2d 1150, 1162 (Utah 1991) (explaining that the rule only limits the use of a defendant's *inculpatory* statements); *Commonwealth v. Verticelli*, 706 A.2d 820, 824 (Pa. 1998) ("Only inculpatory statements of an accused are subject to the protection of the corpus delicti rule."). Furthermore, *Johnson* also excludes application of the rule to statements made before or during the commission of a crime. *Id.* at 1162-63. Other states have a similar exception. *See* Mullen 27 U.S.F. L. REV. at 410-11.

States have further limited the corpus delicti rule by reducing the amount of evidence necessary to satisfy the rule. For example, the Vermont Supreme Court held that independent evidence of the corpus delicti need not prove commission of the crime charged by a preponderance of the evidence. *See State v. Weller*, 644 A.2d 839, 841 (Vt. 1994) ("Slight corroboration may be sufficient."). Likewise, in Massachusetts, "the standard for the corroboration rule . . . is merely that there be some evidence, besides the confession, that the criminal act was committed by someone, that is, that the crime was real and not imaginary." *Commonwealth v. Costello*, 582 N.E.2d 938, 940 (Mass. 1991) (internal quotations omitted).

These numerous exceptions evidence the infirmity of the corpus delicti rule. As one commentator observed, the creation of so many exceptions to the rule has "generally distanced the corpus delicti rule even further from its nominal purposes. The exceptions consume much of the rule and the relaxed evidentiary standard so dilutes the remainder

that any argument for retaining the corpus delicti rule is seriously undercut." Mullen 27 U S F L. REV. at 407.

### 3. The rule is also unsound because it obstructs justice by hindering and even preventing discovery of truth.

"[T]he central purpose of a criminal trial is to decide the factual question of the defendant's guilt or innocence." *Colorado v Connelly*, 479 U S. 157, 166 (1986) (quoting *Delaware v Van Arsdall*, 475 U S 673, 681 (1986)). The exclusion of evidence, even to protect constitutional guarantees, deflects a criminal trial from this basic purpose. *See id.* The exclusion of evidence to serve an anachronistic and unsound common law rule, however, obstructs justice. *See* 7 Wigmore, *Evidence* § 2070 at 510 (Chadbourn rev. 1978).

Literal application of the corpus delicti rule evidences its propensity to obstruct justice. For example, if a defendant is careless enough to leave behind a body or other corroborating evidence, the rule allows the prosecution to confront him with his confession. *People v. McMahan*, 548 N.W 2d 199, 205 (Mich. 1996) (Boyle, J., dissenting). The rule bars the use of a more cunning defendant's confession, however *Id*

In *McMahan*, for example, the victim left her apartment with the defendant *Id* at 200. She was in bare feet, wearing a sleeveless shirt and shorts, and did not take her purse, her thyroid or epilepsy medication, or any identification with her. *Id* at 200, 209 She promised to return home by midnight, but was never heard from again *Id* She was not discovered in any hospital or morgue, she had not recently contacted any of the

governmental agencies she frequented, and her sole means of support—welfare and Medicaid checks—went uncollected *Id.* at 200, 209.

McMahan eventually gave three full confessions detailing the murder. *Id.* He explained how he buried the victim in the basement of his house, then in an alley next to his house, and eventually placed her body in trashbags and threw them in a city dumpster *Id.* A tracking dog detected a human scent inside a crawl space and in the alley, and a police officer testified about a hole in the basement that had been dug out and filled in. *Id.* 202, 209. The police never recovered the murder weapon, nor did they find any human blood stains in the defendant's house. *Id.* at 202. Although the court acknowledged that the nearly five-year delay between the alleged murder and defendant's confession hampered the collection of evidence, *id.*, it nevertheless upheld the reversal of McMahan's murder conviction on the grounds that the evidence did not establish the corpus delicti. *Id.* at 203.

Justice Boyle, however, criticized the court's failure to abandon the corpus delicti rule in favor of the trustworthiness standard. *See Id.* at 209 (Boyle, J., dissenting). He lamented that "the common-law corpus delicti rule operates to shield a recanting defendant cunning enough to destroy a body or conceal its identity, despite a voluntary and reliable confession to the crime. That price is too high." *Id.*

Other examples of the unjust results that the rule often produces are easily discoverable, even in Utah. For example, in *State v. Johnson*, 83 P.2d 1010, 1018 (Utah 1938), this Court applied the corpus delicti rule to reverse a mother's conviction for

murdering her newborn child, finding that the trial court erred in admitting her multiple voluntary confessions. Johnson testified that in sub-zero weather on the night of 1 February 1937, she gave birth to a baby boy, unattended, although her mother slept in the same room and her brother in an adjoining room. *Id* at 1012 She was unconscious for an hour or more after giving birth, but when she regained consciousness she discovered the baby in the bed covered in the vernix caseosa, and with part of the placenta attached *Id* She discovered that the baby was not breathing, nor was its heart beating *Id* She left the baby under the covers until the next evening when she carried it to a park and left it in a public toilet. *Id.*

Johnson told her doctor and the police a different story. *Id.* A few days after the baby was discovered, Johnson went to her doctor hoping that an examination would prove that she had not recently given birth. *Id.* The examination prove the opposite, and the doctor asked Johnson whether the baby found in the toilet was hers. *Id.* Johnson confessed that she already had enough children, could not raise another, and even demonstrated to the doctor how she had put her hand over the baby's nose and mouth to suffocate it. *Id.* at 1012-13. A few days later she again told the doctor that she had suffocated the baby, and explained that she pushed it down under the bed clothes and covered it up when she was sure that it was dead *Id* Johnson also confessed to the deputy sheriff that she killed the baby. *Id*

This Court upheld the trial court's findings that Johnson's confessions were voluntary *Id* at 1013-14 Nevertheless, this Court determined that the confessions were

erroneously admitted because there was no proof of the corpus delicti. *Id.* at 1014-18. This Court cited the absence of marks of violence on the infant or any external signs of suffocation, and the doctor's testimony that the infant died of asphyxiation. *Id.* at 1016.

In a similar case, the Washington Supreme Court reversed a babysitter's manslaughter conviction, finding insufficient independent evidence of the corpus delicti. *State v. Aten*, 927 P.2d 210, 225 (Wash. 1996). An autopsy revealed that the infant victim died of either Sudden Infant Death Syndrome (SIDS) or acute respiratory failure. *Id.* at 214. A pathologist testified that it was possible that manual interference or suffocation could begin the process of respiratory failure in an infant but that the interference or suffocation was not necessarily detectable in an autopsy. *Id.* The pathologist was unable to determine whether the death might have been caused by manual interference or SIDS. *Id.*

In the days after the infant's death, the babysitter—Aten—put some of her possessions in storage, asked people to temporarily keep other possessions, and gave some of them away. *Id.* at 214. She told her daughter that she was doing this because "the sheriff might lock the whole house up." *Id.* When the baby's mother told Aten that the autopsy report showed the baby died of SIDS, Aten told her the report was not true. *Id.*

Aten later confessed to the baby's mother that she had killed the baby by smothering her with a pillow because the baby had cried all night. *Id.* at 215. In a separate statement to the police she explained that she put her hand over the baby's mouth

and nose until the baby calmed down, but that the baby was still fussing when she put the baby back in bed. *Id.* at 216-17. Although the court found that Aten's waiver of rights and confession were voluntary, it nevertheless held that the evidence was insufficient to sustain her conviction under the corpus delicti rule. *Id.* at 224-25.[3]

The corpus delicti rule also hinders prosecutions of child sexual abuse. For example, the Washington Supreme Court reversed a conviction for first-degree child molestation because facts independent of the defendant's confession did not establish the corpus delicti. *See State v. Ray*, 926 P.2d 904, 907 (Wash. 1996). Ray and his wife were sleeping in their bedroom when their three-year-old daughter came into the room asking for a glass of water. *Id.* at 904. Ray, who normally slept nude, left the room with his daughter to get the water. *Id.* He later returned to the bedroom upset and crying, awoke his wife, and had a discussion with her. *Id.* His wife immediately became upset and ran to check on her daughter, who by this time had fallen asleep. *Id.* Ray's wife returned to the bedroom and, after further discussion, Ray placed a call to his sexual deviancy therapist. *Id.* at 904-05.

Ray confessed to the police that he gave his daughter a glass of water and took her back to her bedroom. *Id.* at 905. When she got into bed he took her hand and placed it on his penis. *Id.* After a few seconds the daughter pulled away and Ray returned to his

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[3] One commentator has aptly described the hazards of applying the corpus delicti rule in cases involving SIDS. *See* Catherine L. Goldenberg, Comment, *Sudden Infant Death Syndrome as a Mask for Murder: Investigating and Prosecuting Infanticide*, 28 SW. U. L. REV. 599, 612-17 (1999).

bedroom where he admitted the act to his wife. *Id.* Ray stipulated to the facts in the police report and waived his right to trial. *Id.* Nevertheless, the court applied the corpus delicti rule and reversed his conviction, feeling "bound to follow our previous rulings on the issue." *Id.*

The court did so over Justice Talmadge's well-reasoned dissent, in which he stated, "[t]he rule of corpus delicti has become a serious impediment to the proper handling of certain kinds of cases, particularly those involving highly vulnerable or youthful victims of crime who cannot give voice to the fact of the crime against them." *Id.* at 910 (Talmadge, J., dissenting). Justice Talmadge continued, "In cases such as the one before us, infanticide or child abuse by suffocation, where independent evidence of the crime may be virtually unattainable, it is contrary to the interests of justice to permit the corpus delicti rule to prevent the trier of fact from considering a confession." *Id.*[4]

The above cases illustrate the propensity of the corpus delicti rule to "prevent[] finding the truth." *Id.* at 910-11. The corpus delicti rule extracts a high price "in the form of reversed convictions of guilty persons, [and] prosecutions abandoned or never begun for want of independent evidence of the corpus delicti . . . ." Mullen 27 U.S.F. L. REV. at 386. As Justice Talmadge reasoned, "[s]tare decisis should not stand in the way of enhancing the truthfinding purpose of criminal trials." *Ray*, 926 P.2d at 911.

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[4] Another case that demonstrates how the corpus delicti rule can frustrate justice in child sexual abuse cases is *Commonwealth v. Costello*, 582 N.E.2d 938, 942 (Mass. 1991) (reversing convictions for rape of a child and indecent assault and battery on a child despite the defendant's voluntary confessions).

### 4. The trustworthiness approach is superior because it better protects a defendant's rights while increasing the factfinder's ability to ascertain truth.

Under the trustworthiness approach, a defendant's out-of-court statement can be used against him if the State "introduce[s] substantial independent evidence which would tend to establish the trustworthiness of the statement." *Opper*, 348 U.S. at 93. "It is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Id.* Once the State has proven the that the out-of-court statement is trustworthy, then that statement can be used, together with the evidence independent of the out-of-court statement, to prove the essential elements of the crime. *Id.* As the Court explained in *Smith*, "all elements of the offense must be established by independent evidence or corroborated admissions, but one available mode of corroboration is for the independent evidence to bolster the confession itself and thereby prove the offense 'through' the statements of the accused." 348 U.S. at 156.

As Justice Boyle observed in his dissent, the trustworthiness approach more directly protects the confessing defendant than does the corpus delicti rule. *See People v. McMahan*, 548 N.W.2d 199, 206 (Mich. 1996) (Boyle, J., dissenting). The corpus delicti rule insures only that a crime has been committed by someone. *Id.* The trustworthiness approach, however, insures that a particular statement is sufficiently reliable for the factfinder to hear it. *Id.* Furthermore, the trustworthiness approach applies to any of a defendant's out-of-court statements, not just inculpatory statements. *Compare Opper*, 348 U.S. at 91-92 (applying the trustworthiness standard to any out-of-court statement),

with *Johnson*, 821 P.2d at 1162 (applying the corpus delicti rule exclusively to inculpatory statements).

The trustworthiness approach, like the corpus delicti rule, protects a defendant who "confesses" to a crime that has not been committed. Without the commission of an actual crime it would be difficult to discover significant evidence establishing the trustworthiness of the defendant's confession to the imaginary crime. The trustworthiness approach is superior to the corpus delicti rule, however, because it also protects a defendant who falsely confesses to an actual crime that someone else has committed. *McMahan*, 548 N.W.2d at 207 (Boyle, J., dissenting). "Where there is an indication of unreliability, 'the trial judge . . . should exercise great care in determining whether the statements of the accused were corroborated.'" *Id.* (quoting *United States v. Calderon*, 348 U.S. 160, 164 (1954). As Justice Boyle observed, the trustworthiness approach protects a defendant from "a dishonest police officer, a self-interested accomplice, or a malicious enemy [who] seeks to frame an innocent defendant by fabricating a story that the defendant confessed to committing an actual crime." *Id.* at 207 n.11. The corpus delicti rule, however, lacks similar protections.

The trustworthiness approach is also superior to the rule when applied to crimes without a tangible injury or loss, such as attempt offenses, conspiracy, or tax evasion. In these types of cases it cannot be shown that a crime was committed without identifying the accused. *McMahan*, 548 N.W.2d at 207 (Boyle, J., dissenting). Therefore, the corpus delicti rule requires the State to also product evidence of the offender's identity, thereby

providing more protection to an accused in these cases "than the rule affords to a defendant in a homicide prosecution . . . ." *Id.*; *see also*, *Smith v. United States*, 348 U.S. 147, 154 (1954). The trustworthiness approach avoids this absurd result.

The trustworthiness approach is also easier to apply than the corpus delicti rule. As modern statutory criminal law has increased the number and complexity of crimes, "[s]imply identifying the elements of the corpus delicti . . . provides fertile ground for dispute." McCormick, § 147 at 528. Once the elements of the corpus delicti are defined, a court must then examine whether the independent evidence satisfies those elements, keeping in mind the numerous exceptions to the rule. *Id.* On the other hand, the trustworthiness approach simply examines whether there is substantial independent evidence to corroborate or establish the truthfulness of the defendant's statement. *See Opper*, 348 U.S. at 93.

The trustworthiness approach also increases the factfinder's ability to discover the truth. In cases without a tangible loss or injury, or where actual loss is shown but evidence of criminal agency is lacking, the trustworthiness approach allows the factfinder to hear a validly obtained and voluntary confession, whereas the corpus delicti rule bars such evidence. *See Ray*, 926 P.2d at 910-11. As McCormick concluded, if a corroboration requirement is to be retained, "[t]he Supreme Court's [trustworthiness] approach," rather than the corpus delicti rule, "is best designed to pursue the realistic objectives of a corroboration requirement." McCormick, § 145 at 524.

Just two and a half years after *Opper*, this Court recognized that the corpus delicti rule should not be "applied to create a device for protecting defendants who reek with guilt." *State v. Weldon*, 314 P.2d 353, 355 (Utah 1957). "[T]he rule should be applied with caution and not permitted to be used as a technical obstruction to the administration of justice." *Id.* at 376. This Court further cautioned, "[l]egal doctrines, while appropriate in one setting, may become a deterrent to justice when overxtended [sic]." *Id.* (quoting Note, The Corpus Delicti–Confession Problem, 43 Journal of Criminal Law 214 (1952)).

This Court "will follow the rule of law which it has established in earlier cases, unless clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent." *State v. Menzies*, 889 P.2d 393, 399 (Utah 1994) (overruling the automatic reversal rule of *Crawford v. Manning*, 542 P.2d 1091(Utah 1975)). Like the rule overturned in *Menzies*, the corpus delicti rule "does not work very well." *Id.* at 400. While the rule may have had some utility when this Court decided *Weldon*, the rule was unsound from its inception and the growing complexity of the modern criminal code has only reinforced that conclusion.[5] Subsequent constitutional and statutory protections have surpassed the rule, rendering it an anachronism. To paraphrase *Menzies*, "candor in the law would be better served by abandoning [the corpus delicti rule] rather than straining against its requirement[s]" by fashioning broad exceptions. *Id.* Unlike Judge Learned

[5] The modern criminal code abolishing all common law crimes became effective 1 July 1973. UTAH CODE ANN. §§ 76-1-102 and 76-1-105 (1999).

Hand, this Court should not feel constrained by stare decisis to follow the common law corpus delicti rule, all the while doubting that the rule "has in fact any substantial necessity in justice. . . ." *Daeche v United States*, 250 F. 566, 571 (2nd Cir. 1918). The common law corpus delicti rule is no longer sound and the trustworthiness approach is superior; this Court should therefore adopt the trustworthiness standard.

## II. IF THIS COURT ADOPTS THE TRUSTWORTHINESS STANDARD IT SHOULD REVERSE THE COURT OF APPEALS' DECISION AND AFFIRM DEFENDANT'S CONVICTION BECAUSE HIS CONFESSION WAS TRUSTWORTHY

Defendant's confession was trustworthy. As discussed above, the trustworthiness standard allows the factfinder to consider a defendant's out-of-court statement if the prosecution "introduce[s] substantial independent evidence which would tend to establish the trustworthiness of the statement." *Opper*, 348 U.S. at 93. This evidence need not be sufficient to establish the corpus delicti. *Id.* Rather, "[i]t is sufficient if the corroboration supports the essential facts admitted sufficiently to justify a jury inference of their truth." *Id.* Defendant's confession was admissible under this standard.

Defendant confessed that: the alleged accident occurred in South Salt Lake; it involved both him and his wife; they saw an uncovered manhole; they decided to fabricate a story about falling into the hole; they did so in order to obtain money; and they in fact obtained money by fraud. R. at 37-38.

Substantial independent evidence tended to establish the trustworthiness of defendant's confession. *See Opper*, 348 U S at 93 The evidence established that both

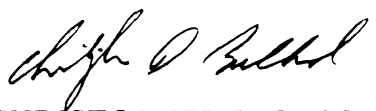
defendant and his wife sought treatment for injuries allegedly suffered outside the FHP hospital in South Salt Lake; both reported that they were injured when they fell into an uncovered manhole outside the hospital; a security officer discovered an uncovered manhole near the hospital; both defendant and his wife filed an insurance claim based on the alleged accident; and both received a $50,000 insurance settlement. R. at 37-38. The independent evidence also established that defendant's confession was voluntary. *Id.* Therefore, defendant's confession was admissible as evidence of his guilt under the trustworthiness standard. Accordingly, this Court should reverse the court of appeals and affirm defendant's conviction.

## CONCLUSION

This Court should adopt the trustworthiness standard, reverse the decision of the Court of Appeals, and affirm defendant's conviction.

Respectfully submitted this 11th day of March 2002.

MARK L. SHURTLEFF
Attorney General

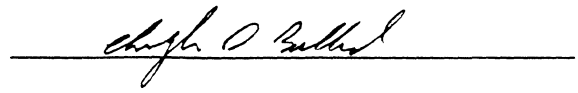


CHRISTOPHER D. BALLARD
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that on 11th March 2002, I mailed, postage prepaid, two accurate copies of the foregoing BRIEF OF PETITIONER to:

Kent R. Hart
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111



# ADDENDUM A

Court of Appeals of Utah.

STATE of Utah, Plaintiff and Appellee,
v.
Brent MAUCHLEY, Defendant and Appellant.

No. 20000682-CA.

June 1, 2001.

David V. Finlayson and Kent R. Hart, Salt Lake City, for appellant.

Mark L. Shurtleff and Christopher D. Ballard, Salt Lake City, for appellee.

Before JACKSON, BENCH, and THORNE, JJ.

MEMORANDUM DECISION (Not For Official Publication).

PER CURIAM.

*1 Defendant asserts that because the State adduced only his confession as evidence of his guilt, the trial court erred in denying his motion to dismiss the charges The State acknowledges that Utah follows the corpus delicti rule Under that rule, a confession alone cannot support a conviction. In addition to the confession, the prosecution must adduce clear and convincing independent evidence that an injury occurred and that the injury resulted from criminal conduct *See, e g, State v Allen,* 839 P 2d 291, 301 (Utah 1992), *State v Johnson,* 821 P 2d 1150, 1163 (Utah 1990); *State v Nguyen,* 878 P 2d 1183, 1188 (Utah Ct App 1994). The State acknowledges that the stipulated facts did not reflect the existence of inculpatory evidence independent of defendant's confession.

After briefing was completed, the State filed a suggestion that the court certify the appeal to the Utah Supreme Court in accordance with rule 43 of the Utah Rules of Appellate Procedure. This court declined to certify the appeal.

In light of the foregoing, the trial court's denial of defendant's motion to dismiss the charges is reversed, and the case is remanded for further proceedings.

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